

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**PATTY BEALL, MATTHEW
MAXWELL, TALINA MCELHANY AND
KELLY HAMPTON, individually
and on behalf of all other similarly situated;**

Plaintiffs,

S S S S S S S S

2:08-cv-422 TJW

**TYLER TECHNOLOGIES, INC. AND
EDP ENTERPRISES, INC.
Defendants.**

**JOINT MOTION FOR ORDER APPROVING PARTIAL SETTLEMENT AND
MOTION TO PRESENT SETTLEMENT PAPERS IN CAMERA**

Plaintiffs Cecilia Alvarado, Sara Balmos, Patricia Beall, Casey Brown, Kyle Collegian, Ingrid Crumbley (Johnson), Guyla Downing, Edwin Francis, Diana Hudman, Brenda Labay, Joshua Leyva, Tami Lynn Maben, James McMann, Suzanne, Thompson-O’Rear, Matthew Ross, Mary Rudolf, David Turner, Nancy Butterbaugh, Robert Ledbetter, Melissa Pastor, Arthur Chang, David Gravely, Matthew Maxwell and Scott Harriman, on behalf of themselves and those Plaintiffs who have opted in to this lawsuit (collectively the “Settling Plaintiffs”) and Defendants, Tyler Technologies, Inc. and EDP Enterprises, Inc. (herein collectively “Tyler”) (collectively referred to herein as “Parties”) file this Joint Motion for Order Approving Partial Settlement and Motion to Present Settlement Papers In Camera, and would show the Court as follows:

I.

INTRODUCTION

In this Fair Labor Standards Act (“FLSA”) action, the Settling Plaintiffs and Tyler jointly request that the Court enter a stipulated order approving the settlement reached between the Parties. The Parties have carefully and exhaustively negotiated a partial, no fault settlement in this action. They have agreed to resolve the disputed factual and legal issues on terms set forth in a settlement agreement, which generally is described below (the “Agreement”). Because the Parties have agreed to maintain the confidentiality of the specific terms of the Agreement, the Parties jointly request to present the Agreement to the Court in camera for review, if necessary, in connection with approval of the settlement.

Pursuant to the Agreement, the Parties seek approval of the partial settlement. The Parties stipulate to the following: that the settlement agreement reflects a reasonable compromise of issues actually in dispute, the settlement was reached in an adversarial context in which the Plaintiffs were represented by competent and experienced counsel, and the totality of the proposed settlement is fair and reasonable.

II.

PROCEDURAL HISTORY

On October 28, 2008, seven (7) Plaintiffs who formerly worked at Tyler and/or Defendant EDP Enterprises, Inc. filed this lawsuit in the United States District Court for the Eastern District of Texas, Marshall Division, alleging overtime violations under the Fair Labor Standards Act (“FLSA”). Thereafter, on May 9, 2009, Plaintiffs filed an Amended Complaint adding additional named plaintiffs who asserted the same overtime claims under the FLSA. By order of June 23, 2006, the Court granted Plaintiffs’ Motion for Conditional Certification.

Thereafter, after notice was sent to employees and former employees of Tyler eligible to participate in the lawsuit, additional plaintiffs opted in under the FLSA's collective action procedures. At the completion of the opt-in period, approximately 68 plaintiffs had elected to join the lawsuit. Thereafter, as discovery in the case commenced, some of the opt-in plaintiffs elected to opt-out of the lawsuit. As the Parties began depositions in the case, there basically existed the following four (4) categories of job functions performed by the remaining plaintiffs and opt-in plaintiffs:

- Telephonic customer support;
- Quality assurance analysis;
- Systems engineering; and
- Implementation consulting

Many of the plaintiffs within these subcategories had different job titles, and Tyler contends that, even within these subcategories, the plaintiffs and opt-in plaintiffs performed significantly different job duties on a day-to-day basis.¹

In the early Spring of 2010, the Parties commenced settlement discussions. To that end, the Parties agreed to participate in mediation before mediator William D. Hartsfield, who has extensive experience mediating FLSA collective actions. Pursuant to the Parties' agreement, the mediation would involve negotiations only of the claims of the first three (3) groups of plaintiffs who performed, again generally, customer support, quality assurance, and systems engineering functions. After nearly 12 hours of mediation on May 10, 2010, and further deliberations the next day, the counsel for the Parties agreed to a final resolution of the claims of the plaintiffs in those three categories.

¹ Tyler does not intend to waive, through this Joint Motion or otherwise, its contention that the lawsuit is not appropriate for collective action under the FLSA due to divergent job responsibilities and duties of the plaintiffs and opt-in plaintiffs. As explained more fully herein, Tyler is agreeing to resolve part of this case only to avoid the fees and costs associated with continued litigation and reserves its right to contest certification should the Court not approve the Parties' settlement.

The plaintiffs and opt-in plaintiffs subject to this settlement are: Cecilia Alvarado, Sara Balmos, Patricia Beall, Casey Brown, Kyle Collegian, Ingrid Crumbley (Johnson), Guyla Downing, Edwin Francis, Diana Hudman, Brenda Labay, Joshua Leyva, Tami Lynn Maben, James McMann, Suzanne Thompson-O'Rear, Matthew Ross, Mary Rudolf, David Turner, Nancy Butterbaugh, Robert Ledbetter, Melissa Pastor, Arthur Chang, David Gravely, Matthew Maxwell and Scott Harriman. The Parties, pursuant to the requirements of the FLSA, now request the Court to approve the resolution of the claims of the plaintiffs and opt-in plaintiffs identified above.

III.

THE COURT SHOULD APPROVE THE PARTIAL SETTLEMENT AGREEMENT

This Court should approve the partial settlement agreement because the partial settlement was achieved in an adversarial context, the Settling Plaintiffs are represented by competent and experienced counsel. Moreover, the Parties stipulate that the settlement provisions are fair and reasonable.

An FLSA claim, except in two circumstances, cannot be waived or settled. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 706 (1945). The exceptions are 1) that the Secretary of Labor can supervise the payment of back wages, or 2) that the employer and employee present the proposed settlement to the district court for approval. 29 U.S.C. § 215(b). Both the Settling Plaintiffs and Defendants request this Court to approve the Parties' partial settlement agreement.

The partial settlement was negotiated at arm's length by experienced counsel who protected the rights of the Parties. Accordingly, the settlement reflects a reasonable compromise regarding bona fide disputes between the Parties with respect to liability and the amount of same under the FLSA. The Parties have agreed to a proposed settlement in order to avoid the

necessity, expense, inconvenience and uncertainty of litigation. Both Parties are represented by counsel experienced in FLSA cases, and counsel for the Parties believe that settlement is in the best interests of their respective clients. Moreover, the partial resolution of the case, the Parties believe, will result in judicial efficiency as the case will be significantly more streamlined in that it would involve only one subcategory of the plaintiffs and opt-in plaintiffs identified above. For these reasons, the Parties respectfully request the Court approve their settlement as to the plaintiffs and opt-in plaintiffs identified herein.

IV.

THE PARTIES REQUEST THAT THE COURT REVIEW THE SETTLEMENT AGREEMENT IN CAMERA

While the terms of the Settlement Agreement are summarized herein, the Parties have agreed to maintain the terms of the Agreement as confidential. As such, it is not filed as an exhibit to this motion. Rather, the Parties have agreed to present the actual Settlement Agreement documents, including if necessary, affidavits by the Settling Plaintiffs' counsel discussing the Lodestar factors and other issues pertaining to reasonable attorneys for the settlement, in a form agreed to by the Parties, to the Court in camera, should the Court require. Such in camera review will allow the Parties to protect the confidentiality of the specific terms of the Settlement Agreement by avoiding any requirement that the document itself be made a matter of public record.

V.

CONCLUSION

The Parties believe that the settlement reached was a fair and reasonable compromise of the respective positions of both sides. The Parties therefore respectfully request the Court approve the settlement and enter an order dismissing the claims of the following settling

Plaintiffs: Cecilia Alvarado, Sara Balmos, Patricia Beall, Casey Brown, Kyle Collegian, Ingrid Crumbley (Johnson), Guyla Downing, Edwin Francis, Diana Hudman, Brenda Labay, Joshua Leyva, Tami Lynn Maben, James McMann, Suzanne, Thompson-O'Rear, Matthew Ross, Mary Rudolf, David Turner, Nancy Butterbaugh, Robert Ledbetter, Melissa Pastor, Arthur Chang, David Gravely, Matthew Maxwell and Scott Harriman. Entry of such an order will "secure the just, speedy, and inexpensive determination" of this action in accordance with Federal Rule of Civil Procedure 1.

Respectfully submitted:

/s/ Laureen F. Bagley

John D. Sloan, Jr.
Texas Bar No. 18505100
jsloan@texttrialfirm.com
Laureen F. Bagley
Texas Bar No. 24010522
lbagley@texttrialfirm.com
SLOAN BAGLEY, HATCHER
& PERRY LAW FIRM
101 East Whaley Street
PO Drawer 2909
Longview, Texas 75606
phone - 903.757.7000
facsimile - 903.757.7574

Alexander R. Wheeler
awheeler@rrexparris.com
Jason Paul Fowler
jfowler@rrexparris.com
R. REX PARRIS LAW FIRM
4222010th Street West, Suite 109
Lancaster, CA 93534-3428
phone - 661.949.2595
facsimile - 661.949.7524

/s/ Paulo B. McKeeby

Paulo B. McKeeby
Texas Bar No.: 00784571
paulo.mckeeby@morganlewis.com
Joel S. Allen
Texas Bar No.: 00795069
joel.allen@morganlewis.com
Ellen L. Perlioni
Texas Bar No. 00794155
ellen.perlioni@morganlewis.com
Farin Khosravi
Texas Bar No. 24043753
farin.khosravi@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP
1717 Main Street, Suite 3200
Dallas, Texas 75201-7347
phone - 214.466.4000
facsimile - 214.466.4001

John P. Zelbst
zelbst@zelbst.com
Chandra L. Homes Ray
chandra@zelbst.com
ZELBST, HOLMES & BUTLER
PO Box 365
Lawton, OK 73502-0365
phone – 580.248.4844
facsimile – 580.248.5916
James E. Wren
James_Wren@baylor.edu
One Bear Place, #97288
Waco, TX 78798-7288
phone – 254.710.7679
facsimile – 254.710.2817

ATTORNEYS FOR PLAINTIFFS

Deron R. Dacus
Texas Bar No.: 00790553
derond@rameyflock.com
RAMEY & FLOCK P.C.
100 East Ferguson, Suite 500
Tyler, Texas 75702
phone – 903.597.3301
facsimile – 903.597.2413

ATTORNEYS FOR DEFENDANTS
TYLER TECHNOLOGIES, INC. AND
EDP ENTERPRISES, INC.